

BY AUTHORITY

ORDINANCE NO. _____
SERIES OF 2019

COUNCIL BILL NO. CB19-
COMMITTEE OF REFERENCE:
Finance & Governance

A BILL

For an ordinance adding a new ~~Division _____ of Article IV, Denver Minimum Wage~~Chapter 58, Wages.

WHEREAS, despite a state-wide minimum wage rate, many working Denver residents struggle to afford the basic necessities of life;

WHEREAS, the health and welfare of all Denver residents is benefited and advanced when workers are paid a wage which enables them to ~~live above the federal poverty line~~earn a livable wage and establish self-sufficiency;

WHEREAS, the ~~City~~city seeks to confront the issue of wage ~~equity~~inequity and cost of living affordability in the community;

WHEREAS, the ~~City~~city has historically demonstrated leadership on pay-equity issues;

WHEREAS, during the 2019 legislative session the Colorado legislature empowered local governments to establish a jurisdiction-wide minimum wage in accordance with certain requirements and restrictions mandated by state law;

WHEREAS, the Denver Revised Municipal Code requires payment of certain wages with respect to city contracts, however no jurisdiction-wide minimum wage was previously permitted pursuant to state law;

WHEREAS, ensuring that workers in Denver can support themselves and their families benefits the Denver economy and the well-being of the city; ~~and~~

WHEREAS, addressing the minimum wage needs of workers is a matter of significant local concern;

WHEREAS, studies of local minimum wage laws have demonstrated that jurisdiction-wide minimum wage laws can increase earnings for workers without negatively affecting overall employment;

~~WHEREAS, Outreach.~~

~~WHEREAS, City Council finds that a new division _____~~ **WHEREAS**, the city has consulted with surrounding local governments and extensively engaged with community stakeholders, including chambers of commerce, small and large businesses, businesses that employ tipped

1 workers, workers, labor unions and numerous community groups;

2 WHEREAS, the city engaged with hundreds of community stakeholders by facilitating five (5)
3 publicly-advertised open town hall meetings, by conducting open office hours to discuss minimum
4 wage related-issues, and has met with dozens of community leaders to receive and consider advice
5 and feedback related to a Denver minimum wage;

6 WHEREAS, the city throughout its expansive outreach efforts solicited, received and
7 considered feedback, and revisited the terms of this ordinance based on stakeholder feedback;

8 WHEREAS, city council finds that a new chapter should be added to city code to require
9 employers throughout Denver to compensate workers no less than the Denver minimum wage
10 established herein; ~~and~~

11 ~~WHEREAS, the City~~ WHEREAS, the city has enjoyed robust economic growth for a prolonged
12 period, and if the local economy is materially impaired subsequent to the effective date of this
13 ordinance, and found by the city not capable of reasonably-sustaining future increases to the
14 minimum wage in effect pursuant to this ordinance, the city will review and evaluate the
15 appropriateness of future increases to Denver’s minimum wage; and

16 WHEREAS, the city seeks to regulate wage rates in its legislative capacity.

17 **NOW, THEREFORE, BE IT ENACTED BY THE COUNCIL OF THE CITY AND COUNTY OF**
18 **DENVER:**

19 **Section 1.**— ~~___~~ A new ~~Section 20___, Division _____ of~~ Chapter 58 - Wages, Article IV. – In
20 General, Section 58-1. – 58-15. of the Denver Revised Municipal Code shall be added and read as
21 follows:

22 Secs. 58-1. – 58.15. – Reserved.

23 **Section 2.** A new Chapter 58 - Wages, Article II. – Minimum Wage, Section 58-16. of the
24 Denver Revised Municipal Code shall be added and read as follows:

25 Sec. ~~20___~~58-16. –Denver minimum wage.

26 (a) *Required.* Subject to the terms of this ~~division~~ article, every employer shall ensure its workers
27 are paid not less than the “Denver Minimum Wage” as calculated pursuant to ~~subsection~~ Section
28 58-16(b) for work performed in accordance with this ~~division~~ article.

29 (b) *Calculation of Denver minimum wage.*

30 (1) City council hereby declares that it is in the best interest of the city to ~~protect workers’~~
31 ~~bargaining power and~~ establish the Denver minimum wage that shall be paid to workers in
32 the manner described in this ~~division~~ article.

1 (2) The Denver minimum wage, exclusive of fringe benefits and any other deductions or credits
2 ~~except~~except as described in this ~~division~~article, shall be calculated as follows:

3 i. Beginning January 1, 2020: ~~\$13.80 (thirteen~~12.85 (twelve dollars and eighty-~~five~~five cents)
4 per hour; ~~and~~

5 ii. Beginning January 1, 2021: ~~\$14.77 (fourteen dollars and seventy-seven cents) per hour;~~
6 ~~and~~

7 iii. Beginning January 1, 2022: \$15.87 (fifteen dollars and eighty-seven cents) per hour.

8 (3) Tips regularly and actually received by a food and beverage worker may be applied to an
9 employer's obligation to pay such food and beverage worker the Denver minimum wage.
10 However, no more than \$3.02 per hour in tip income ("Tip Credit") may be used to partially
11 offset payment of the Denver minimum wage.

12 ~~(4) Employers may pay wages for work performed equal to the then-current Denver minimum~~
13 ~~wage reduced on an hourly basis by up to 15 percent when compensating unemancipated~~
14 ~~minor workers for work performed pursuant to a certified youth employment program. The~~
15 ~~Denver economic development and opportunity agency may issue rules and regulations~~
16 ~~related to certification and maintenance of eligibility of an employer as a certified youth~~
17 ~~employment program. The foregoing shall not affect any tip credit offset prescribed by this~~
18 ~~article, which shall also be permitted.~~

19 (5) In order to prevent inflation from eroding the value of the city's minimum wage rate, on
20 January 1, ~~2022~~2023, the Denver minimum wage rate shall increase by an amount
21 corresponding to the prior year's increase, if any, in the Consumer Price Index (Urban Wage
22 Earners and Clerical Workers, Denver-Aurora-Lakewood) or its successor index as
23 published by the U.S. Department of Labor or its successor agency ("CPI"). Annually
24 thereafter, on the first of January, the Denver minimum wage rate shall increase by an
25 amount corresponding to the prior year's increase, if any, in CPI.

26 (c) *Exclusions.* In accordance with Colorado law, this ~~division~~article shall not apply to work that:

27 (1) is not performed physically within the geographic boundaries of the city; (2) is performed by a
28 worker totaling less than four hours in any given week for a particular employer within the geographic
29 boundaries of the city; or (3) occurs in the city solely for the purpose of traveling through Denver
30 from a point of origin outside of the city to a destination outside of Denver, with no employment-
31 related or commercial stops in the city except for refueling or the worker's personal meals or errands.

32 (d) ~~Violations~~Worker Complaints. Subject to any rules and regulations that may be issued by
33 the auditor, any worker may submit a complaint of a violation of this ~~division~~article by her or his

1 employer to the ~~auditor~~auditor. The burden of demonstrating to the auditor's satisfaction that a
2 violation has occurred rests with the person making the complaint and shall be demonstrated by a
3 preponderance of the evidence. Any such complaint shall be made in writing to the auditor and shall
4 include all information relied upon by such person. If a worker filing a complaint pursuant to this
5 ~~subsection~~Section 58-16(d) is unable to reasonably file her or his complaint in writing, a complainant
6 may request the auditor to assist him or her with documenting any allegations to satisfy the written
7 complaint requirement. A worker may also consult with an attorney or other third-party for assistance
8 when filing a complaint. The auditor shall prioritize complaints received pursuant to rules established
9 by the auditor and may investigate any credible complaints; For any credible complaint investigated
10 by the auditor, the auditor shall notify any employer alleged to have violated this ~~division~~article of
11 any credible complaint, and shall provide a summary of findings regarding any such complaint to
12 both the complainant and the employer. Any determination by the auditor pursuant to this
13 ~~division~~article is reviewable by the complained-of party, pursuant to ~~subsection (f)~~Section 58-16(h).
14 Any complaint must be submitted to the auditor within one year of the date the employer was alleged
15 to have violated the requirements of this ~~division~~article, and shall include: the worker's name and/or
16 the name of their duly authorized representative, if applicable; the worker's contact information; ~~and~~
17 a detailed statement of the employer's alleged violation of the requirements of this ~~division~~article,
18 including readily available supporting documentation demonstrating a violation; and any additional
19 information requested by the auditor or pursuant to rules issued by the auditor. Employers shall be
20 subject to penalties and other consequences pursuant to this ~~division~~article for any actual violation(s)
21 that occurred within one year of the date a credible complaint was first and timely submitted to the
22 auditor pursuant to this ~~division~~Section 58-16(d) and within three years of the date an investigation
23 of an employer by the auditor (not limited to a specific complaint) is initiated following the earlier of
24 receipt of a credible worker complaint concerning a specific employer by the auditor, referral of a
25 complaint from the State of Colorado or any agency thereof, referral of a complaint from a city agency
26 specifically authorized to receive complaints made pursuant to this article, or filing of a private right
27 of action by a worker against an employer pursuant to this ~~division~~article. At any time, the auditor
28 may refer a worker complaint to an appropriate state or federal agency to coordinate resources with
29 respect to such complaint or otherwise assist a worker alleging a violation of this article or other law.
30 (e) Third party complaints. Subject to any rules and regulations that may be issued by the
31 auditor, any person or entity may submit a complaint of a violation of this article to the auditor. The
32 burden of demonstrating to the auditor's satisfaction that a violation has occurred rests with the
33 person or entity making the complaint and shall be demonstrated by a preponderance of the

1 evidence. Any non-worker complaint shall be made in writing to the auditor and shall include all
2 information relied upon by such person or entity. The auditor shall prioritize complaints received
3 pursuant to rules established by the auditor and may investigate any credible complaints. For any
4 credible complaint investigated by the auditor, the auditor shall notify any employer alleged to have
5 violated this article of any credible complaint, and shall provide a summary of findings regarding any
6 such complaint to both the complainant (unless the complaint was filed anonymously) and the
7 employer. Any determination by the auditor pursuant to this article is reviewable by the complained-
8 of party, pursuant to Section 58-16(h). Any complaint must be submitted to the auditor within one
9 year of the date an employer was alleged to have violated the requirements of this article, and shall
10 include: a detailed statement of the employer's alleged violation of the requirements of this article,
11 including readily available supporting documentation demonstrating a violation; and any additional
12 information requested by the auditor or pursuant to rules issued by the auditor. Employers shall be
13 subject to penalties and other consequences pursuant to this article for any actual violation(s) that
14 occurred within one year of the date a credible third-party complaint was first and timely submitted
15 to the auditor pursuant to this Section 58-16(e) and within three years of the date an investigation of
16 an employer by the auditor (not limited to a specific complaint) is initiated following receipt of a
17 credible third-party complaint concerning a specific employer by the auditor. At any time, the auditor
18 may refer a third-party complaint to an appropriate state or federal agency to coordinate resources
19 with respect to such complaint or otherwise secure assistance for persons or entities alleging a
20 violation of this article or other law.

21 (f) *Investigations in the absence of a complaint.* On and after January 1, 2022, the auditor may
22 utilize data collected and received concerning non-compliance with this article to investigate and
23 enforce the terms of this article against employers and industries without issuance of a prior credible
24 complaint consistent with rules established by the auditor and as follows:

25 (1) Prior to an investigation absent a credible complaint, the auditor must determine that based
26 on available information a reasonable basis exists for a belief that a violation of this article has
27 occurred or will occur due to any or all of the following:

28 i. The owner or partial owner of a legal entity has violated the terms of this article with respect
29 to another entity with common ownership interests;

30 ii. A pattern and practice, including but not limited to receipt of multiple credible complaints
31 filed against a particular industry, demonstrates an increased likelihood that certain workers within
32 an industry are regularly not paid wages as required by this article;

1 iii. The auditor receives credible information from a state or federal agency that demonstrates
2 an increased likelihood that a particular employer or industry has failed to comply with the terms of
3 this article; or

4 iv. The auditor, relying upon data collected or received by the city, establishes a reasonable
5 basis to conclude that a particular employer or industry is likely to have failed to comply with the
6 terms of this article.

7 (g) Retaliation strictly prohibited. No employer shall interfere with, restrain, deny, assist another
8 person or entity, or attempt to deny the exercise of any right protected under this divisionarticle. Any
9 attempted or actual retaliation shall be regulated as follows:

10 (1) No employer or any other person shall take any adverse action against any person because
11 the person has exercised in good faith rights described in this divisionarticle. Such rights
12 include, but are not limited to: the right to file and pursue a private cause of action alleging
13 a violation of this divisionarticle; the right to make inquiries about rights protected under this
14 divisionarticle; the right to inform an employer, a union or similar organization, and/or the
15 person's legal counsel or any other person about an alleged violation of this divisionarticle;
16 the right to file a written complaint with the auditor; the right to cooperate with the auditor in
17 any investigations pursuant to this divisionarticle; the right to testify in a proceeding related
18 to an investigation pursuant to this divisionarticle; the right to refuse to participate in an
19 activity that would result in a violation of city, state, or federal law; and the right to oppose
20 any policy, practice, or act that is unlawful pursuant to this divisionarticle.

21 (2) No employer or any other person shall communicate to a person exercising rights protected
22 under this divisionarticle, directly or indirectly, the willingness to inform a government
23 employee that the person is not lawfully in the United States, or to report, or to make an
24 implied or express assertion of a willingness to report, suspected citizenship or immigration
25 status of a worker or a family member of the worker to a federal, state, or local agency
26 because the worker has exercised a right pursuant to this divisionarticle.

27 (3) It shall be a rebuttable presumption of retaliation if an employer or any other entity or person
28 takes an adverse action against a person within 90 days of the person's exercise of rights
29 protected in this divisionarticle. However, in the case of seasonal work that ended before
30 the close of a 90-day period, the presumption also applies if the employer or other person
31 or entity fails to rehire a former worker at the next opportunity for work in the same position.
32 The employer may rebut this presumption with clear and convincing evidence that the
33 adverse action was taken for a lawful purpose.

1 (4) Proof of retaliation shall be sufficient upon a showing that an employer or any other person
2 or entity has taken an adverse action against a person and the person's exercise of rights
3 protected in this ~~division~~article was a motivating factor in the adverse action, unless the
4 employer can prove by clear and convincing evidence that the action would have been taken
5 in the absence of such protected activity.

6 ~~(f)~~ *City-initiated enforcement; appeals.* Any determination of the auditor related to the payment
7 of the Denver minimum wage and an employer's strict adherence to the requirements of this
8 ~~division~~article including, but not limited to, determinations of worker status, determinations of
9 underpayment or misreporting, and the imposition of penalties pursuant to this ~~division~~article shall
10 be reviewable as follows:

11 (1) Any employer who disputes any determination made by or on behalf of the city pursuant to
12 the authority of the auditor, which determination adversely affects such employer, may
13 petition the auditor for a hearing concerning such determination no later than thirty (30) days
14 after having been notified of any such determination. Compliance by an employer with the
15 provisions of this ~~subsection~~Section 58-16(h)(1) shall be a jurisdictional prerequisite to
16 appeal any determination made by the auditor pursuant to this ~~division~~article, and failure of
17 compliance shall forever bar any such appeal. The foregoing in no way shall preclude or
18 limit a worker from initiating a private cause of action pursuant to this ~~division~~article.

19 (2) The auditor shall designate as a hearing officer a person retained by the city for appeal
20 purposes.

21 (3) The petition for a hearing shall be in writing, and the facts and figures submitted shall be
22 submitted under oath or affirmation either in writing or orally at a hearing scheduled by the
23 hearing officer. The hearing, if any, shall take place in the city, and notice thereof and the
24 proceedings shall otherwise be in accordance with rules and regulations issued by the
25 auditor. The petitioner shall bear the burden of proof, and the standard of proof shall conform
26 with that in civil, nonjury cases in state district court.

27 (4) The designated hearing officer may hold hearings pursuant to this ~~division~~article, subpoena
28 witnesses and compel their attendance, administer oaths and take the testimony of any
29 person under oath and compel witnesses to produce for examination books and papers
30 related to the subject matter of the appeal.

31 (5) Following a hearing, the hearing officer shall make a final determination. Such final
32 determination shall be considered a final order and may be reviewed under Rule 106(a)(4)
33 of the state rules of civil procedure by the employer or by the city. A request for

1 reconsideration of the determination may be made if filed in writing with the hearing officer
2 within fifteen (15) days of the date of a final determination, in which case the hearing officer
3 shall review the record of the proceedings, and the determination shall be considered a final
4 order upon the date the hearing officer rules on the request for reconsideration.

5 (6) The district court of the second judicial district of the State of Colorado shall have original
6 jurisdiction in proceedings to review all questions of law and fact determined by the hearing
7 officer by order or writ under Rule 106(a)(4) of the state rules of civil procedure.

8 (g) *Recordkeeping requirements and inspection.* All employers shall retain sufficient payroll
9 records concerning work performed for a period of at least three years. After a worker or third-party
10 complaint determined credible by the auditor has been received, referral of a complaint from the
11 State of Colorado or any agency thereof, referral of a complaint from a city agency specifically
12 authorized to receive complaints made pursuant to this article, pursuant to an investigation in
13 accordance with Section 58-16(f), or a private right of action has been initiated by a worker against
14 an employer pursuant to this ~~division~~article, the employer shall promptly allow the auditor access to
15 such records at a reasonable time during normal business hours to review and assess employer's
16 compliance with the requirements of this ~~division~~article. The auditor's review of an employer's
17 records following receipt of a credible worker or third-party complaint, referral of a complaint from
18 the State of Colorado or any agency thereof, referral of a complaint from a city agency specifically
19 authorized to receive complaints made pursuant to this article, pursuant to an investigation in
20 accordance with Section 58-16(f), or initiation of a private right of action shall not be limited to workers
21 who have filed complaints. Should an employer not maintain or retain adequate records
22 documenting the manner and amount of wages paid for work performed pursuant to this
23 ~~division~~article, or not allow the auditor reasonable access to such records within thirty (30) days of
24 an auditor request, there shall be a presumption, rebuttable by clear and convincing evidence, that
25 the employer violated this ~~division~~article for the periods and for each worker for whom adequate
26 records were not retained or access to such records was not timely provided.

27 (h) *Private right of action, authorization and scope.* ~~Any~~Within three (3) years of an alleged
28 violation of this article, any aggrieved party may bring a civil action in a court of competent jurisdiction
29 against an employer alleged to have violated this ~~division~~article, and, upon prevailing, shall be
30 entitled to such legal ~~or~~and equitable relief as may be appropriate to fully remedy the violation
31 including, without limitation: the payment of any ~~back~~-wages unlawfully withheld and any unpaid
32 overtime based on those wages, (including amounts that accrued after the filing of the civil action),
33 interest on unpaid wages and overtime compensation at a rate of 12 percent per annum from the

1 date such wages were first due, the payment of an additional sum as a penalty in the amount of
2 \$100 to each worker whose rights under this ~~division~~article were violated for each day that the
3 violation occurred or continued, liquidated damages in an amount equal up to three times the amount
4 of unpaid wages and overtime compensation in connection with such wages, reinstatement of
5 employment (if applicable) and/or other injunctive relief, and shall be awarded reasonable attorney
6 fees and costs. Nothing in this ~~division~~Section 58-16(j) shall be interpreted as restricting, precluding,
7 or otherwise limiting a separate or concurrent investigation by the auditor of an alleged violation of
8 this ~~division~~article pursuant to city code. Jeopardy shall not attach as a result of any administrative
9 or civil enforcement action ~~taken~~initiated pursuant to this ~~division~~article.

10 **Section 2.** A new ~~Section 20-___, Division _____ of Chapter 58 - Wages, Article IVII. –~~
11 Minimum Wage, Section 58-17. of the Denver Revised Municipal Code shall be added and read as
12 follows:

13 Sec. ~~20-___~~58-17. – Enforcement ~~and,~~ penalties and costs.

14 (a) *Enforcement.*

15 (1) Following notification of a worker or third-party complaint determined credible by the auditor,
16 a complaint referred to the auditor in accordance with this article, or pursuant to an
17 investigation in accordance with Section 58-16(f), an employer shall furnish to the auditor,
18 upon the auditor's request, a true and correct certified copy of the payroll records of all
19 workers in accordance with the terms of this ~~division~~article. Such payroll records shall reflect
20 the entire period of record keeping required by this ~~division~~article, and include information
21 documenting the number of hours worked by each worker, the hourly wage paid such
22 workers, any deductions made from worker wages including but not limited to any tax
23 withholdings, and the net amount of wages received by any such worker.

24 (2) Payroll records produced pursuant to ~~subsection~~Section 58-17(a)(1) shall be accompanied
25 by a sworn statement of the employer that records provided are a true and correct copy of
26 the requested payroll records pursuant to this ~~division~~article, that payments were made to
27 workers as set forth in the payroll records, that no deductions were made other than those
28 described in such records, and that any worker identified in a complaint and any other
29 workers for whom the auditor has requested the production of records have been paid at
30 least the Denver minimum wage for all work or a detailed description of all instances and
31 ways in which the foregoing requirements were not fully satisfied and all explanations
32 therefore.

1 (3) Employers shall post in a place which is prominent and easily accessible to workers an
2 auditor-approved notice concerning the Denver minimum wage to be paid to workers, and
3 that complaints related to any alleged violations may be submitted to the auditor. Employers
4 shall display the posting in English and Spanish. If display of a physical notice is not feasible,
5 including situations when a worker does not have a regular workplace or job site, employers
6 may provide the required information on an individual basis, in a worker's primary language,
7 in a physical or electronic form that is reasonably conspicuous and accessible.

8 (4) The auditor is authorized to enforce findings and orders made pursuant to this article and
9 collect any and all assessed and unpaid penalties and other amounts from employers who
10 violate any of the terms of this article either informally, or by action initiated in state district
11 court.

12 (b) *Penalties.* Any employer subject to the requirements of this ~~division~~article shall as a penalty
13 pay to the city an amount as set forth below for each worker for each day they are paid less than the
14 Denver minimum wage for the performance of work.

15 (1) The amount of the penalty shall be determined by the auditor based on consideration of both
16 of the following:

17 a. Whether the failure of the employer to pay the correct wage rate was a good faith mistake
18 and, if so, the error was corrected within thirty (30) days of the date it was brought to the
19 attention of the employer.

20 b. Whether the employer has ~~a prior record of failing~~previously failed to ~~meet~~satisfy the
21 requirements of this ~~division~~article.

22 (2) ~~The~~An employer's penalty shall be up to fifty dollars (\$50.00) for each day, or portion thereof,
23 for each worker paid less than the Denver minimum wage rate for work, unless the failure of
24 the employer to ensure payment of the Denver minimum wage rate was a good faith mistake,
25 the employer has not previously failed to timely pay a worker the Denver minimum wage
26 (regardless of whether a penalty was assessed), and the underpayment was paid in full
27 within thirty (30) days of the date it was brought to the attention of the employer in writing by
28 the worker or the auditor.

29 (3) An employer's penalty shall be an amount not less than one thousand dollars (\$1,000.00)
30 and not greater than two thousand five hundred dollars (\$2,500.00) for a violation, plus an
31 amount not less than ten (\$10) and not greater than seventy-five dollars (\$75.00) for each
32 day, or portion thereof, for each worker paid less than the Denver minimum wage rate for

1 work, if the employer has been assessed a penalty, but not more than two (2) other penalties,
2 within the previous three (3) years of the date of the complaint or notice of an investigation
3 is provided to employer for failure to comply with the terms of this ~~division~~article, unless all
4 such penalties were subsequently withdrawn or overturned during the same three (3) year
5 period pursuant to this ~~division~~article.

6 (4) An employer's penalty shall be an amount not less than two thousand five hundred dollars
7 (\$2,500.00) and not greater than five thousand dollars (\$5,000.00) for a violation, plus an
8 amount not less than fifty dollars (\$50.00) and not greater than one hundred dollars
9 (\$100.00) for each day, or portion thereof, for each worker paid less than the Denver
10 minimum wage rate for work, if the employer has been assessed three (3) or more other
11 penalties within the previous three (3) years of the date of the complaint or notice of an
12 investigation is provided to employer for failure to comply with the terms of this
13 ~~division~~article, unless any such penalties were subsequently withdrawn or
14 ~~overturned~~reversed resulting in two (2) or fewer penalties during the same three (3) year
15 period pursuant to this ~~division~~article.

16 (5) An employer's penalty shall be up to one thousand dollars (\$1,000.00) for each instance in
17 which any employer fails to furnish the auditor a complete and certified payroll for any worker
18 filing a complaint against employer pursuant to this ~~division~~article, unless the failure of the
19 employer to furnish the auditor a complete and certified payroll was a good faith mistake
20 and, if so, the error was corrected within ten (10) days of the date the auditor notifies
21 employer of such failure. This penalty shall be imposed in conjunction with penalties
22 imposed under ~~subsections~~ Section 58-17(b)(2)-(4), and shall apply whether or not the work
23 was performed by worker directly for an employer or for another person or entity on
24 ~~employer's behalf~~the employer's behalf except as described in 58-18(c).

25 (6) An employer's penalty shall be one thousand dollars (\$1,000.00) for each incident of false
26 reporting in connection with a certified payroll not corrected within ten (10) days of the date
27 the auditor notifies the employer of such report. A certified payroll shall be determined to be
28 a false report when information related to hours worked or wages paid reported on a certified
29 payroll is not identical to supportive documentation, including payments issued to workers,
30 timecards maintained by employer, invoices for work performed issued to other persons or
31 entities, and tax documents. This penalty shall be imposed in conjunction with penalties
32 imposed under ~~subsections~~ Section 58-17(b)(2)-(5).

1 ~~(7) An Employer's~~ (7) An employer's penalty shall be five thousand dollars (\$5,000.00) for each
2 violation of Section 58-16(g). This penalty shall be imposed in conjunction with penalties
3 imposed under Section 58-17(b)(2)-(6).

4 (8) An employer's penalty shall be one thousand dollars (\$1,000.00) for each violation should
5 an employer be found by the auditor to have violated any obligation of employer described
6 in this ~~division~~article and not otherwise described in ~~subsections~~ Section 58-17(b)(2)-(6).

7 ~~(89)~~ An employer who is found by the auditor pursuant to this ~~division~~article to have failed to
8 ensure payment of the Denver minimum wage to a worker for work shall, within thirty (30)
9 days of notice of a violation from the auditor, or if applicable, thirty (30) days from any final
10 order pursuant to Section ~~20—(f58-16(h))~~, attempt in good faith to locate and pay any such
11 worker all wages required pursuant to this ~~division~~article. Failure by any employer to attempt
12 in good faith to locate and ensure payment of any underpaid worker in compliance with the
13 terms of this ~~subsection~~Section 58-17(b)(8) shall for any underpayment to a worker greater
14 than fifty dollars (\$50.00) result in a penalty of five thousand dollars (\$5,000.00) for each
15 such violation. If an employer is able to adequately document to auditor its good faith efforts
16 to locate and timely pay a worker all wages owed within forty five (45) days from any final
17 order pursuant to Section ~~20—(f58-16(h))~~ it shall not be subject to further penalty if it is
18 unable to reasonably locate or pay a worker all Denver minimum wages owed and strictly
19 complies with ~~subsections~~ Section 58-17(b)(9)-(1310)-(14). Any finding or penalty for failure
20 to timely pay a worker, or attempt in good faith to locate and timely pay a worker amounts
21 owed pursuant to this ~~subsection~~Section 58-17(b)(9) shall be subject to review pursuant to
22 Section ~~20—(f58-16(h))~~.

23 ~~(9)–10)~~ Any employer who is found by a final order to have failed to pay a worker or workers all
24 amounts owed pursuant to this ~~division~~article and who is unable to timely locate and pay
25 any amount owed to a worker may submit to the auditor, for each worker to whom wages
26 are due, a check payable to that worker or to the ~~city~~City of Denver in a manner that is
27 negotiable by either the worker or the city. Each such check shall be for the amount of the
28 difference between wages owed a worker pursuant to this ~~division~~article and the amount
29 actually paid to that worker.

30 ~~(4011)~~ Any check submitted pursuant to ~~subsection~~ Section 58-17(b)(910) shall be
31 negotiated by the city and the proceeds deposited in the auditor's unclaimed minimum wage
32 special trust fund. Nothing in ~~subsections~~ Section 58-17(b)(9)-(1310)-(14) shall be

1 construed to lessen an employer's responsibility to attempt in good faith to locate and pay
2 all workers all wages due pursuant to this ~~division~~article.

3 (~~11~~12) Any valid, verified claim by a worker for payment from the auditor's unclaimed
4 minimum wage special trust fund must be made prior to ~~two (2)~~three (3) years after the date
5 of the most recent underpayment of wages by employer to the worker to whom such wages
6 were due. After such date, the city shall no longer be liable for payment. The city, as trustee,
7 shall pay such claimant only the amount of the check concerning such claimant that is
8 actually negotiated pursuant to ~~subsection~~Section 58-17(b)(4011), regardless of any
9 dispute as to any additional amount of wages owed by an employer to ~~worker~~the claimant.
10 No interest shall be paid by city on any funds received or ~~dispersed~~disbursed pursuant to
11 ~~subsections~~Section 58-17(b)(9)-(1310)-(14).

12 (~~2~~13) On the last working day of each calendar month, the amount of any claim for which
13 the city is no longer liable pursuant to Section 58-17(b)(12) shall be credited to the general
14 fund, except as otherwise required by law.

15 (~~3~~14) The auditor shall maintain a list of all unclaimed, city-negotiated minimum wage
16 checks ~~for which the city is liable~~received. Such list shall be updated monthly, and shall be
17 available for inspection at the office of the auditor.

18 (c) Costs and attorney fees. Any employer found to have violated the terms of this article shall
19 in addition to any assessed penalties pay to the city an amount equal to city's reasonable attorney
20 fees and costs in connection with the applicable complaint or investigation.

21 **Section 34.** A new ~~Section 20~~Section 58-18, Division ~~_____~~_____ of ~~Chapter 58 - Wages~~Chapter 58 - Wages, Article ~~IV~~II. –
22 Minimum Wage, Section 58-18, of the Denver Revised Municipal Code shall be added and read as
23 follows:

24 Sec. ~~20~~58-18. – Miscellaneous.

25 (a) *Workers; intent.* The intent of this ~~division~~article is to ensure the payment of at least the
26 Denver minimum wage to as many workers as possible in accordance with limitations imposed by
27 Colorado law. It is not the intent of this ~~division~~article to apply the Denver minimum wage to work
28 performed by independent contractors, or reduce any differing wage requirements established by
29 federal or state law or that arise from or in connection with federal or state funding, ~~and any.~~ Any
30 greater wage requirements ~~and restrictions~~ shall be controlling in the event of a conflict between a
31 federal or state wage requirement and the requirements of this ~~division~~article.

32 (b) *Application of ~~division~~this article to prevailing wage, city minimum wage and living wage.*
33 Nothing in this ~~division~~article shall be deemed to lessen any obligations of employers to comply with

1 the Denver Revised Municipal Code concerning payment of prevailing wage, the city minimum wage
2 and/or living wage to workers. Should a prevailing wage, city minimum wage or living wage
3 requirement be greater than the Denver minimum wage requirement, the greater wage rate shall be
4 paid. If the Denver minimum wage requires payment of a higher wage rate than an applicable
5 prevailing wage, city minimum wage or living wage requirement for work, the Denver minimum wage
6 shall be paid to any worker for such work.

7 (c) *Responsibility of employer.* An employer may engage agents, ~~independent contractors,~~
8 subcontractors, individuals and other entities to perform work on ~~employer's~~the employer's behalf.
9 Each employer shall be solely responsible for ensuring payment of the Denver minimum wage to
10 any and all agents and/or persons performing work on an individual employer's behalf for purposes
11 of compliance with this ~~division~~article. Employers may seek indemnification or recovery from third
12 parties for penalties an employer incurs for failure to comply with the requirements of this
13 ~~division~~article. However, any such rights shall in no way excuse an employer from taking whatever
14 steps are necessary to ensure compliance with this ~~division~~article by all persons engaging in work
15 on behalf of or for the benefit of an employer, nor serve as a basis for an employer to avoid payment
16 of any monetary penalties or occurrence of other consequences for violation(s) of this ~~division~~article.
17 Expressly excluded from the requirements of this Section 58.7-18(c) is work performed on behalf of
18 an employer that is an individual person and that is exclusively limited to work performed for home
19 improvement purposes by another entity or person that qualifies as an employer pursuant to this
20 article.

21 ~~(d) Definitions. For purposes of this division~~(d) Data collection and analysis. The auditor shall
22 track complaints and investigations during each calendar year, beginning January 1, 2020, and by
23 March 31 of the following year issue a written report to City Council reporting on enforcement metrics
24 and assessing the efficacy of this article to ensure full payment of the Denver minimum wage for
25 work performed and also to make recommendations respecting any changes to this article the
26 auditor believes necessary to promote full and prompt payment of the Denver minimum wage to
27 workers.

28 (e) Definitions. For purposes of this article, the following definitions shall apply:
29 "Adverse Action" shall mean denying a job or promotion, demoting, terminating, failure to
30 rehire after a seasonal interruption of work, threatening, penalizing, retaliating, engaging in unfair
31 immigration-related practices, filing a false report with a government agency, changing an
32 employee's status to a nonemployee, and ~~may involve any~~any other negative change to an aspect

1 of employment, including modification of pay, work hours, responsibilities, or other material change
2 in the terms or conditions of a ~~worker's person's~~ employment;

3 "Aggrieved party" means a worker or other person who suffers tangible or intangible harm
4 due to an employer or other person's violation of this ~~division~~ article;

5 "Certified youth employment program" shall mean a program certified by the Denver
6 Economic Development & Opportunity ("DEDO") agency that provides unemancipated minors
7 employment opportunities in conjunction with a curriculum designed to develop enumerated skills
8 and competencies of unemancipated minors. Any such program shall adhere with rules, regulations
9 and certification requirements issued by DEDO and provide skills development above and beyond
10 the time spent simply performing work in the job.

11 "City" shall mean the City and County of Denver;

12 "Complaint" shall mean a complaint submitted pursuant to Section ~~20-___(d)~~ 58-16(d) or
13 Section 58-16(e);

14 "Employ, ~~Employed~~ employed, or ~~Employed By~~ employed by" means to suffer or permit to
15 work;

16 "Employer" shall mean any corporation, proprietorship, partnership, nonprofit, joint venture,
17 association, individual, limited liability company, business trust, or any person or group of persons,
18 and any of the foregoing acting directly or indirectly in the interest of an employer in relation to a
19 worker, and any successor thereof;

20 "Food and ~~Beverage Worker~~ beverage worker" shall mean a worker for any business or
21 enterprise that prepares and offers for sale food or beverages for consumption either on or off an
22 employer's physical premises;

23 "Successor" shall mean any person to whom an employer quitting, selling out, exchanging, or
24 disposing of a business sells or otherwise conveys in bulk and not in the ordinary course of the
25 employer's business, a major part of employer's property, whether real or personal, tangible or
26 intangible, of the employer's business. For purposes of this definition, "person" means an individual,
27 receiver, administrator, executor, assignee, trustee in bankruptcy, trust, estate, firm, company,
28 limited liability company, association, joint venture, or any other legal or commercial entity;

29 "Tips" shall mean a verifiable sum presented directly and customarily by customers as a gift
30 or gratuity in recognition of some service performed for customers by the person receiving the tip;

31 "Unemancipated minor" shall mean a person less than 18 years of age who does not maintain
32 sole or primary responsibility for his or her own support, is not married or domiciled separately from
33 his or her parents or guardian, and is unable to show that his or her well-being is substantially

1 dependent on being gainfully employed.

2 “Work” shall mean any services performed on behalf of or for the benefit of an employer
3 whether on an hourly, piecework, commission, time, task, or other basis but shall not include services
4 performed as an independent contractor; and

5 “Worker” shall mean a person performing work, and includes, but is not limited to: ~~fulltimefull~~
6 time employees, part-time employees, temporary workers, ~~independent contractors~~, agents, and any
7 other person or entity performing work on behalf of or for the benefit of an employer. This definition
8 shall not apply to work performed by independent contractors while acting solely in such capacity or
9 by persons limited to providing volunteer services that are uncompensated except for reimbursement
10 of expenses such as meals, parking or transportation.

11 (e) The provisions of this divisionarticle are declared to be separate and severable. If any clause,
12 sentence, paragraph, subdivision, section, subsection or portion of this divisionarticle, or the
13 application thereof to any employer, person, entity or circumstance is preempted or otherwise
14 prohibited by federal or state law or is held to be invalid, it shall not affect the validity of the remainder
15 of this divisionarticle, or the validity of its application to other persons or circumstances.

16 **Section 45.** This ordinance shall be effective January 1, 2020.

17
18 **BALANCE OF PAGE INTENTIONALLY LEFT BLANK**

1 COMMITTEE APPROVAL DATE: _____, 2019.
2 MAYOR-COUNCIL DATE: _____, 2019.
3 PASSED BY THE COUNCIL _____

4 _____ - PRESIDENT

5 APPROVED: _____ - MAYOR _____

6 ATTEST: _____ - CLERK AND RECORDER,
7 EX-OFFICIO CLERK OF THE
8 CITY AND COUNTY OF DENVER

9 NOTICE PUBLISHED IN THE DAILY JOURNAL:

10 _____; _____; _____;

11 PREPARED BY: Frank Romines, Assistant City Attorney DATE: _____, 2019

12 Pursuant to section 13-12, D.R.M.C., this proposed ordinance has been reviewed by the office of
13 the City Attorney. We find no irregularity as to form and have no legal objection to the proposed
14 ordinance. The proposed ordinance is not submitted to the City Council for approval pursuant to
15 §3.2.6 of the Charter.

16
17 Kristin M. Bronson, Denver City Attorney

18
19 BY: _____, Assistant City Attorney DATE: _____